IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 46 OF 2006
WITH
WRIT PETITION NO. 276 OF 2006.

Goa State Cooperative Bank Ltd.
Through its Managing Director
and another. .... Appellants/
Petitioners.

Versus

Shri Rajan Vinayak Lotlikar,
Ponda, Goa. .... Respondent.

Shri S. R. Rivonkar, Government Advocate for the Appellants/Petitioners.

Shri S.D. Lotlikar, Senior Advocate with Shri S.Y. Thali, Advocate for the Respondent.

CORAM: SMT. RANJANA DESAI, J.

DATE: 5th JULY, 2006.

P.C.:

Heard learned counsel for the parties.

2. In my opinion considering the nature of the dispute involved, Regular Civil Suit No. 40/60/A needs to be disposed of at the earliest. In the circumstances of the case, without expressing any opinion on the merits of the case and on the rights and contentions of the parties, in the interest of justice following order needs to be passed. Hence the order :-

1. Regular Civil Suit 40/60/A filed by the respondent in the Court of the Civil Judge, Senior Division, at Ponda shall be expedited and the learned Trial Judge will dispose of the same within a period of eight months from today. The parties shall appear before the learned Trial Judge on 10.07.2006 at 10.00 a.m. for further direction in the matter.

2. The amount of Rs.5,00,000 (Rupees Five lakhs only) deposited by the Respondent with the Appellants pursuant to order dated 23.06.2006 of this Hon'ble Court shall be adjusted against the alleged dues of the Respondent to the Appellant in terms of the award dated 22.03.2005 in case no. ARCS/HO/CC/ABN/2246 and award dated 17.05.2004 in case no. ARES/HO/CC/ABN-2249. The deposit of this amount with the Appellant and adjustment thereof as aforementioned shall be subject to the final orders passed by the Trial Judge in the aforementioned Civil Suit 40/2006/A. The Appellant shall bring back the amount of Rs. 5,00,000/- (Rupees Five lakhs only) with interest at such rate as fixed by the trial Court in the event of the trial court directing that the amount be brought back or holding that the same was not payable to the respondent.

3. All questions including the question of jurisdiction of the trial Court to entertain and decide CivilSuit No.40/2006/A are kept open to be decided by the trial Court at the time of the final disposal of the suit. The trial Court shall not be bound by the order dated 10.05.2006 passed by the trial Judge in Regular Civil Suit No. 40/2006/A rejecting the application of the Appellant dated 02.05.2006 under Order 7, Rule 11 (Exh.11 of the Trial Court record) and the trial Judge shall be free to decide the issue of jurisdiction afresh without being influenced by the observations made in the said order dated 10.05.2006.

4. The suit shop premises shall remain under attachment pending the hearing and final disposal of the suit.

5. The appellant shall be at liberty to sell the flat bearing No.C-1, admeasuring 74.54 sq. mts. and the first floor of the building known as “Julieta Apartments” at Ponda which has already been attached by the Sale and Recovery Officer in execution of the award dated 22.03.2005 in case no. ARCS/HO/CC/ABN/2246 and award dated 17.05.2004 in case no. ARES/HO/CC/ABN-2249, in the event of the Trial Court vacating the order staying the sale issued by the Trial Court in Civil Miscellaneous Application No. 17/2006/D in Regular Civil Suit 15/2006/A instituted by Smt. Smita Rajan Lotlikar. The

sale of the said suit flat and adjustment of sale proceeds shall be subject to the final decision of the Trial Court in Regular Civil Suit 40/2006/A.

6. There shall otherwise be a stay of execution proceedings, pending hearing and final disposal of Suit 40/2006/A, in respect of award dated 22.03.2005 in case no ARCS/HO/CC/ABN/2246 and award dated 17.05.2004 in case No ARES/HO/CC/ABN-2249 save and except what has been stated above.

6A. Nothing stated in this order shall preclude the Appellant from filing an application for rectification of the awards dated 22.03.05 and 17.05.04.

7. Parties to bear their own costs.

3. Appeal from Order No. 46/06 and Writ Petition No. 276/06 are disposed of in the aforestated terms.

SMT. RANJANA DESAI, J.

sl.